

CHAPTER 2017-18

No. 272 AN ORDINANCE IN AMENDMENT OF CHAPTER 18 ½ OF THE CODE OF ORDINANCES OF THE CITY OF PROVIDENCE ENTITLED "POLICE," ADDING SECTION 18 ½-4, "PROVIDENCE COMMUNITY-POLICE RELATIONS ACT"

Approved June 6, 2017

Be it ordained by the City of Providence:

SECTION 1: An ordinance amending Chapter 18 ½, "Police," of the Code of Ordinances of the City of Providence, to add a new section entitled "Providence Community-Police Relations Act."

Sec. 18 ½.4 – Providence Community-Police Relations Act.

(a) Definitions.

For the purposes of this section, the following terms shall be defined as follows:

- (1) *Racial and other forms of discriminatory profiling* is defined as the reliance on race, ethnicity, color, national origin, use of a foreign language, gender, gender identity and/or expression, sexual orientation, political affiliation, religion, housing status, physical or mental disability, or serious medical condition as a basis, in whole or in part, for suspecting that a person has committed or is about to commit a crime or is about to commit a crime, unless the officer's decision is based on a specific and reliable suspect description as well.
- (2) *Law enforcement officer, or police officer* means any member of the Providence Police Department, duly sworn and vested with police power.
- (3) *Electronic Data Collection* means a report produced from computer-aided dispatch (CAD), electronic documentation, or any other police-generated report, in accordance with RIGL 31-21.2-5(c), and shall include all the following information:
 - i) The date, time and general location of the stop;
 - ii) The race or ethnicity, gender, and approximate age of the individual(s) stopped; provided that the identification of these characteristics shall be based on the observation and perception of the police officer making the stop and the information shall not be requested of the person(s) stopped;
 - iii) In the law enforcement officer's own words, the reasonable suspicion and/or probable cause, if such exists, giving rise to the stop;
 - iv) Whether a search was executed as a result of the stop;
 - v) The scope of any search conducted;
 - vi) Whether the search was conducted pursuant to probable cause and/or reasonable suspicion, and what the probable cause and/or reasonable suspicion prompting the search was in the officer's own words;

- vii) Whether any contraband, including money, was seized in the course of the search, and if so, the nature of the contraband;
- viii) Whether any warning or citation was issued as a result of the stop;
- ix) Whether an arrest was made as a result of either the stop or the search;
- x) The approximate duration of the stop; and
- xi) The federal identification number of the officer.

(4) *Investigatory Activity* means any traffic stop, pedestrian stop, interview, interrogation, detention, frisk, pat-down, Terry frisk, Terry pat-down, or any search of a person or property.

(5) *Limited English Proficient Individual* means any person whose primary language is not English and/or who does not have the ability to adequately understand or communicate effectively in English.

(6) *Qualified Interpreter* means an individual who is able to interpret simultaneously and consecutively and sight translate from English into a foreign language and from said language into English, in accordance with RI General Laws §8-19-2.

(7) *Transgender* is an umbrella term that describes individuals whose gender identity is different from their assigned sex at birth.

(b) Prohibition on racial and other forms of discriminatory profiling.

When conducting any investigatory activity, law enforcement shall not rely on race, ethnicity, color, national origin, use of a foreign language, limited English proficiency, gender, gender identity and/or expression, sexual orientation, political affiliation, religion, housing status, physical or mental disability, or serious medical condition as a basis, in whole or in part, for suspecting that a person has committed or is about to commit a crime, unless the officer's decision is based on a specific and reliable suspect description that includes not just these characteristics, but other identifying characteristics or information as well.

(c) Documentation.

(1) Electronic Data Collection Report

- i) An officer completing an Electronic Data Collection Report shall record the information identified in subsection (a) (3) of this ordinance.
- ii) The Providence Police Department shall establish policies clearly outlining the definition of "stop" and shall require the completion of an Electronic Data Collection Report the completion of all stops. Said policies shall be public documents and shall be made available on the Police Department website. The Providence External Review Authority shall be notified of any changes to this policy and shall have the power to review and make recommendations for improving the policy.
- iii) The subject of a traffic or pedestrian stop shall be able to request and receive, at the police station, a physical copy of the report which includes all of the data elements identified in subsection (a)(3) within (72) hours of the stop.

iv) No later than one (1) year after the passage of this ordinance, it shall be required that, at every stop, the officer shall provide the subject with information regarding the stop including a reference number to access their report, the officer's federal identification number, and the contact information for the Providence External Review Authority.

(2) Video and Audio Recording

i) The Providence Police Department shall adopt written policies regarding the use of video and/or audio recording devices such as, but not limited to, dashboard cameras, body cameras, and digital audio recorders, should the Department utilize these devices. These policies shall be public records and shall include, without limitation, the following standards:

1. Standards setting forth when the device is required to be activated and when the device must not be activated.
2. The subject of a stop shall be advised by the officer that the encounter is being recorded when practicable and consistent with ensuring officer safety and the safety of others.
3. A chain of custody record of the recordings shall be maintained.
4. Once a video/audio recording of a stop has been preserved by the Police Department for further investigation beyond the minimum retention period established by policy, the subject of said stop shall be notified by the Police Department of this action and shall be informed that they, and or their legal counsel, shall have the right to request to view and listen to the recording involving them at a reasonable time and location within ten (10) business days of the request provided that such notification does not adversely impact imminent law enforcement action.
5. The policy shall establish a minimum period of retention for such recordings of no less than sixty (60) days, and procedures to ensure that the recording equipment is in proper working order, and shall bar the destruction of any recording related to an incident that is the subject of a pending complaint, misconduct investigation or civil or criminal proceeding. Such recordings shall be retained for a minimum of ten (10) days after the final resolution of such investigation or proceeding, including the time for any appeal;
6. The policy shall explicitly prohibit any violation of these requirements, including any attempts to disengage or tamper with the video/audio surveillance equipment or to otherwise fail to record stops as specified in the policy;

ii) While on duty and in interactions with the public, police shall be prohibited from using personal audio or video recording devices. Only devices subject to the policy outlined above shall be permitted.

iii) Police shall not interfere with, harass, demand identification from, or otherwise intimidate members of the public making video or audio recordings of police activity in any place the individual who is recording has a legal right to be present. Law enforcement officers shall not intentionally block or obstruct cameras or other recording devices. Law enforcement officers shall not damage or destroy recording devices or cameras, and deleting and/or altering recordings or photographs under any circumstances shall be prohibited. However, nothing contained within this section shall limit the ability of an officer to take appropriate action, if the actions of those recording interfere with the officer's official duties or with the safety of the officer or others.

(d) Traffic Stops

(1) Prior to asking the subject of a vehicle stop for their license, a law enforcement officer must, when practicable and consistent with ensuring officer safety or the safety of others, describe to the subject the suspected violation that prompted the stop.

(2) No operator of a motor vehicle shall be requested to provide any documentation or identification other than a driver's license or a form of identification listed in subsection (f)(7), motor vehicle registration, and/or proof of insurance when the motor vehicle has been stopped solely for a traffic violation, unless there exists reasonable suspicion and/or probable cause of criminal activity, or the operator has failed to produce a valid driver's license, or the particular type of vehicle stopped requires other types of documentation specified under Title 31 of the R.I. Gen. Laws or under Federal Law.

(3) No passenger of a motor vehicle shall be requested to provide identification or any other documentation by a law enforcement officer when the motor vehicle has been stopped solely for a traffic violation, unless there exists reasonable suspicion and/or probable cause of criminal activity.

(4) Unless there exists reasonable suspicion and/or probable cause of criminal activity, no motor vehicle stopped for a traffic violation shall be detained beyond the time needed to address the violation.

(5) When an individual is cited for driving without a valid license under §31-11-18-18.1 of the R.I. General Laws and this constitutes the only criminal charge resulting from the traffic stop, the individual may be issued a court summons but may not be arrested, provided that the individual can show identification including alternative forms of identification as described in subsection (f)(7). However, in accordance with §31-11-18.1(a) of the R.I. General Laws nothing in this section shall prohibit the arrest of an individuals cited for driving when their license to operate is suspended, revoked, or cancelled for:

- (i) operating under the influence of a narcotic drug or intoxicating liquor;
- (ii) refusing to submit to a chemical test; reckless driving;
- (iii) manslaughter from the operation of a motor vehicle or operating so as to endanger resulting in death; or
- (iv) three (3) moving violations within a one-year period.

(e) Searches

(1) Any individual requested to consent to a search by a law enforcement officer of their motor vehicle, person, or belongings shall be informed by the officer of their right to refuse consent to the search. An individual's choice not to consent to a search shall not be deemed reasonable suspicion to conduct a search.

(2) When practicable and consistent with ensuring officer safety or the safety of others, searches shall be performed by an officer of the same gender identity as the individual being searched. If an officer of the individual's gender identity is not present at the time, one will be called to the scene as soon as possible so as not to unnecessarily delay the time required to perform the search. Individuals who identify as transgender or gender non-conforming have the right to indicate their preference to be searched by either a male or female officer. If the individual's gender request can be reasonably and expeditiously accommodated without risk to officer safety, the request should be granted. The Providence Police Department shall develop and maintain policies and protocols for how officers shall conduct searches of transgender and gender non-conforming individuals. Said policies shall be public documents, available on the Police Department website, and shall be subject to review by the Providence External Review Authority.

(f) Surveillance and Privacy

(1) Providence Police Department shall not engage in targeted electronic surveillance to collect or retain information about the lawful activities of targeted individuals or groups without reasonable suspicion that such activities relate to criminal activity or a judicial warrant specific to the time, place, and target of such surveillance.

(2) Police may not engage in an undercover capacity with groups in non-public places based solely on those groups' participation in First Amendment protected activities.

(3) Police may not consider an individual's lack of proof of identification or failure to respond to a request for identifying information as probable cause or reasonable suspicion of criminal activity, unless the police have a lawful reason to require identification.

(4) When attempting to determine the identity of a person appearing to be under eighteen (18) years of age, police or their representatives must accept any statement of that youth that they do not have any form of identification in their possession and may not repeat a request for the same form of identification once a juvenile has stated that they do not have that form of identification.

(5) Police may not photograph individuals confirmed to be under eighteen (18) years of age or, in the event that age identification cannot be confirmed, individuals who appear to be under eighteen (18) years of age, in accordance with subsection (f)(4), except:

- i) As part of formal booking procedures
- ii) To document evidence of a crime;
- iii) When there is reasonable suspicion and/or probable cause to believe that the juvenile is engaged in criminal activity;

- iv) Pursuant to a court order;
- v) During large scale public events;
- vi) Via video or audio recording equipment used in compliance with subsection (c)(2); or
- (vii) For the specific purpose of documenting injury sustained by the juvenile.

However any photographs taken of juveniles shall be destroyed within ninety (90) days, unless otherwise prohibited by law, or unless a specific investigation pertaining to the juvenile remains open or specific charges against the juvenile have been filed and a case remains pending against the juvenile.

(6) Police may not inquire about an individual's immigration status.

(7) Any valid identification issued by a foreign government including but not limited to consular identification, foreign driver's license, or passport, shall be considered acceptable identification to the same extent as identification issued by a domestic government agency.

(8) No police officer shall identify any individual as a member of a gang in any list or database maintained by any law enforcement agency, nor in any reports, memoranda or other document, unless the individual meets the criteria for inclusion on a so-called "gang list" or "gang database." No Police Department official authorized to enter information into the gang database shall identify any individual as a gang member in written notes unless the individual meet the criteria for inclusion on the so-called "gang list" or "gang database." The list of criteria used to determine inclusion on the "gang list" or "gang database" shall be public information, shall be subject to review by the Providence External Review Authority, and shall not include:

- i) Association with other people identified as gang members or any substantially equivalent factor;
- ii) Race;
- iii) Location of domicile; nor
- iv) Location of encounter.

(9) Gang list/database notification.

(i) Any individual shall have the ability to inquire whether he or she has been included on a "gang list" or "gang database." If such disclosure does not adversely impact imminent law enforcement action, the individual shall be informed if he or she is in the database by written notice no later than ten (10) business days after the inquiry is received. Additionally, the written notice shall explain the right to appeal and the process to appeal the individual's inclusion on the "gang list" or "gang database" as prescribed in this ordinance. The fact that an individual inquired about their inclusion on the "gang list" or "gang database" shall not be considered evidence that the individual is a member or associate of a gang, nor shall it be included in the criteria for inclusion on the "gang list" or "gang database."

(ii) Prior to adding any individual under eighteen (18) years of age to the “gang list” or “gang database,” the Providence Police Department shall provide written notice, pursuant to the aforementioned policies, of the designation and the basis for the designation by notarized letter delivered via certified mail to the person and their parent or guardian, unless such disclosure would adversely impact imminent law enforcement action. Additionally, the written notice shall explain the right to appeal and the process to appeal the individual’s inclusion on the “gang list” or “gang database” as prescribed in this ordinance.

(iii) The Police Department shall establish policies governing the handling of the requests and notifications set forth in (f)(9)(i) and (ii), and for ensuring the safety of the individuals notified. Such policies shall be public documents, available on the Police Department website, and subject to review by the Providence External Review Authority.

(10) Gang list/gang database appeals.

(i) The Police Department shall establish policies allowing for the administrative removal of individuals from the gang list or gang database in the event that an individual and the Police Department mutually agree that said individual was added to the gang list or gang database in error. Such policies shall be public documents, available on the Police Department website, and subject to review by the Providence External Review Authority.

(ii) Upon request, an individual whose name has been included on a gang list or gang database may challenge that designation through a formal appeal to the Providence External Review Authority. A hearing shall be scheduled within thirty (30) days at which the Police Department shall establish that the inclusion of the challenging individual on the gang list or gang database was consistent with the established Police Department policy. If a simple majority of the Providence External Review Authority (PERA) finds that the inclusion of the challenging individual on the gang list or gang database was not consistent with established Police Department policy, the challenging individual shall be removed from the gang list or gang database. Such hearings shall not be open meetings and under no circumstances shall evidence or information related to on-going investigations presented at such hearings be shared with any individual beyond the members of PERA, necessary PERA staff, the appellant, and the appellant’s legal counsel.

(11) In the event that an appeal is not successful, a notation will be made in the file and in any transmission of the information concerning that individual, that the person denies the allegation of gang membership or association. The appellant in an unsuccessful appeal shall not be permitted to appeal again for at least one (1) calendar year.

(12) No information related to on-going appeals or successfully contested allegations of gang membership or association shall be shared with any third party unless required by law.

(13) If an individual has no convictions within a two-year period after their name has been placed on the “gang list,” and no new evidence meeting the criteria for inclusion on the “gang list” has been found, the name shall be removed and all related records destroyed. A letter confirming that the individual's name has been removed from the gang list shall be sent to the person at their last known address. However, the two-year period shall not include any time the individual spent incarcerated or serving a suspended sentence.

(14) Each year, the Providence Police Department shall produce a report providing the total number of individuals whose names are included on the “gang list,” with demographic detail including age, race, ethnicity, and gender, and a total of how many of those individuals have challenged their inclusion on the “gang list.”

(15) Each year, the Providence Police Department shall engage an independent auditor, selected by PERA, the City Solicitor, and the Commissioner of Public Safety, to audit the “gang list,” identify any errors, and make recommendations for improving the operations and use the “gang list.” A full report of the results of the audit shall be provided to the Commissioner of Public Safety, the Chief of Police, and to PERA for its review. In the auditor's report, the names of individuals on the “gang list” shall not be included and shall, instead, be replaced with unique identifying numbers. The identity of the auditor shall remain confidential.

(g) Language access for Limited English Proficient (LEP) individuals

(1) The Police Department shall maintain a language access hotline to connect police officials in the field with qualified interpreters in a timely manner. Officers who wish to question an LEP individual for any reason and are not fluent in a language spoken proficiently by that individual, shall not question that individual without the aid of the aforementioned language access hotline or without a qualified interpreter is present, except in emergency situations. Police shall not use family members, friends or bystanders as interpreters, except when the aforementioned language access hotline is unavailable or in emergency situations and/or for the purposes of explaining to an individual that they are securing an interpreter or the language access hotline.

(2) The Police Department shall establish and maintain policies for the use of the language access hotline, setting standards for determining language fluency among officers, and clearly defining emergency situations. Such policies shall be public documents, available on the Police Department website, and subject to review by the Providence External Review Authority.

(3) All custodial interrogations in police stations or substations involving LEP individuals must be recorded and such recording shall be made available to the interrogated individual and/or their attorneys. Whenever an officer equipped with a body camera conducts a custodial interrogation of an LEP individual in the field, that interrogation shall be recorded. Recordings made pursuant to this subsection shall be made available to the interrogated individuals and/or their attorneys, unless doing so would impede an ongoing investigation.

(4) Miranda Warnings, and all other vital written materials, will be available in the five
 (5) Most commonly spoken languages in Providence, according to the most recent
 Census data. In the case of a language into which forms have not been translated and in
 the case of illiteracy, forms will be read to a suspect or witness in their primary language
 using the contracted interpretation services.

(5) At each police building with direct public access, signs shall be posted in the five (5)
 most commonly spoken languages in Providence, according to the most recent Census
 data, at each public access point or lobby stating that a language access hotline will be
 provided free of charge to LEP individuals.

(h) Collaboration with other law enforcement agencies

- (1) Any formal agreements addressing cooperation and mutual assistance between Providence Police and other law enforcement agencies shall be deemed public documents, subject to the Access to Public Records Act, R.I. Gen. Laws 38-2-1 et seq., and posted on the City's website unless it adversely impacts investigatory activities.
- (2) A law enforcement officer shall not detain an individual on the basis of a request from another agency or pursuant to an administrative warrant, after the individual is eligible for release from custody, unless the agency has a criminal warrant, issued by a judicial officer, for the individual, or the detention is otherwise constitutional.
- (3) Providence Police are not permitted to comply with requests by other agencies to support or assist in operations conducted solely for the purpose of enforcing federal civil immigration law, including but not limited to requests to establish traffic perimeters related solely to immigration enforcement.
- (4) Nothing in this chapter prohibits or restricts any official from sending to, or receiving from federal immigration authorities, information regarding the citizenship or immigration status, lawful or unlawful, of an individual pursuant to Sections 1373 and 1644 of Title 8 of the United States Code.
- (5) All joint activities undertaken between Providence Police Department and other law enforcement agencies not governed by formal agreements as covered in this Section shall publicly report as soon as practicable upon completion of the operation.
- (6) The Providence Police Department shall abide by the provisions of this ordinance at all times, including when working in collaboration with outside law enforcement agencies.

(i) Accountability and Enforcement:

(1) Generally

- i) When conducting a stop or search, a police officer must provide their federal identification number.

ii) Any subject of a stop or search may ask an on-duty law enforcement officer for a business card containing the officer's federal identification number. The officer must comply with the request, when practicable and consistent with ensuring officer safety and the safety of others. Such requests shall not be deemed reasonable suspicion of criminal activity. When in uniform, Providence Police officers must wear their federal identification number on their uniform.

(2) An individual subjected to any violation of this ordinance, other than a violation of subsection (i)(5), may file a civil action for injunctive and declaratory relief, as well as compensatory damages against:

- i) Any governmental body that employs any law enforcement officer who has engaged, is engaging, or continues to engage in violations of any section of this ordinance; and
- ii) Any law enforcement officer who has engaged, is engaging, or continues to engage in knowing and willful violations of any section of this ordinance.

(3) Preservation of rights. This section shall be in addition to all rights, procedures, and remedies available under the United States Constitution, Section 1983 of Title 42 of the United States Code, the Constitution of the State of Rhode Island and all other federal law, state law, municipal law and all preexisting civil remedies, including monetary damages, created by statute, ordinance, regulation or common law.

(4) The chief of police shall prepare and make available on the city's website, as well as to the Providence External Review Authority, the City Council and the public, a quarterly report commencing with the city's fiscal year containing the following information:

- i) Compilation of the data collected pursuant to subsection (c)(1), providing at a minimum statistical descriptions of individuals stopped, results of the stop, analyzed by direct and cross-tabulation of race, ethnicity, gender, and age (as perceived by the officer initiating the stop).
- ii. Maps or other graphic representations providing approximate geographical locations of aggregate stops.
- iii. Complaints received by the Office of Professional Responsibility involving alleged violations of one or more provisions of this ordinance.
- iv. A summary of all pending civil and criminal litigation against the Providence Police Department or any of its employees, or the City of Providence, alleging violations of any provision of this ordinance.
- v. Copies of any new policies or revisions to existing policies enacted during the report period.

(5) The Providence External Review Authority, upon review of all data described in subsection (i)(5)(i), may recommend diversionary reinvestments that would, if implemented, reallocate City funding from the Police Department Budget as a whole, and from the funds specifically allocated to the office of Public Safety Commissioner, to municipal recreation, youth programming and employment opportunities.

- i) A written description of these recommendations shall be submitted to the Mayor and the City Council no later than the last day of January.
- ii) The Mayor and or the Public Safety Commissioner shall provide a written response to the recommendations no later than 20 days after receiving them.
- iii) The Finance Committee of the City Council, or any other Committee within the City Council most responsible for preparing a budget proposal to be considered by the Council as a whole, shall review and respond to the recommendations during its budget deliberations. It shall conduct a public hearing at which members of the public may present their responses to the recommendations. For any city Department potentially affected by a diversionary reinvestment, the Director or their designee must attend the public hearing described in this subsection.

(6) The Providence External Review Authority shall be authorized to review proposed labor agreements between the City of Providence and any labor union representing sworn officers employed by the City at the time tentative signed agreements are submitted to the City Council, and to make recommendations to either or both parties negotiating the labor contract.

(7) The Providence External Review Authority shall be specifically authorized to accept complaints relating to any violation of the Community Safety Act, as well as complaints about improper or inappropriate use of canines.

(j) No provision or violation of this ordinance shall be used as an independent basis to suppress evidence in a criminal proceeding.

(k) Appropriate funding shall be made available to implement the provisions of this chapter.

(l) Severability.

The provisions of this Ordinance shall be severable. If any phrase, clause, sentence or provision of this Ordinance is declared by a court of competent jurisdiction to be invalid, the validity of the remainder of the Ordinance and its applicability to any other agency, person or circumstances shall not be affected.

(n) No later than six (6) months from the Enactment of this Ordinance, the Commissioner of Public Safety and the Chairperson of PERA, shall issue to the City Council a report on the implementation of this Ordinance.

SECTION 2: This act shall take effect on January 1, 2018.

IN CITY COUNCIL

APR 20 2017

FIRST READING



READ AND PASSED, As Amended

 CLERK


IN CITY
COUNCIL

JUN 01 2017

FINAL READING
READ AND PASSED

 PRESIDENT
 CLERK

I HEREBY APPROVE.

 Mayor
Date: 6/8/16